

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

BRITTANY S BAIER,

Petitioner,

v.

Case No. 21-cv-1067-bhl

JENNIFER McDERMOTT,

Respondent.

ORDER DISMISSING UNEXHAUSTED CLAIM

On September 13, 2021, Petitioner Brittany Baier, a state-court prisoner currently incarcerated at Taycheedah Correctional Institute, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. Section 2254. (ECF No. 1.) The petition raises two claims. First, Baier claims the trial court's order prohibiting certain expert testimony on Battered Woman Syndrome denied her the right to present a defense. Second, she contends a juror violated her right to an impartial jury when that juror brought extraneous information into the jury room. (*Id.* at 6-7.) On October 5, 2021, the Court screened the petition and ordered Respondent Jennifer McDermott to respond. (ECF No. 4.) On December 9, 2021, Respondent filed a motion to dismiss Baier's first claim because she did not exhaust it in state court. (ECF No. 10 at 2.) On June 27, 2022, Baier responded and asked the Court to dismiss the unexhausted claim and allow her to pursue habeas relief on the remaining claim. (ECF No. 14.) Respondent filed her reply on July 19, 2022, stating she had "no objection" to Baier's request. (ECF No. 15 at 2.)

Courts should allow habeas petitioners "to delete [] unexhausted claims and to proceed with [] exhausted claim[s] if dismissal of the entire petition would unreasonably impair the petitioner's right to obtain relief." *Rhines v. Weber*, 544 U.S. 269, 278 (2005) (citation omitted). Because dismissal of Baier's entire petition would unreasonably impair her right to obtain relief, and because Respondent has no objection, the Court will grant Baier's request to strike her unexhausted claim and allow her to proceed with the rest of her petition.

Accordingly,

IT IS HEREBY ORDERED that Respondent's motion to dismiss Baier's unexhausted claim, ECF No. 9, is **GRANTED**. The claim related to Baier's right to present a defense is dismissed.

IT IS FURTHER ORDERED that Respondent must now answer Baier's petition on or before **August 22, 2022**. Baier must then submit a brief in support of her petition on or before **October 7, 2022**. Respondent's response will be due on or before **November 21, 2022**. Petitioner's reply will be due on or before **December 21, 2022**.

Dated at Milwaukee, Wisconsin on July 20, 2022.

s/ Brett H. Ludwig

BRETT H. LUDWIG

United States District Judge